

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.18485-M of 2007

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Date of decision:21.8.2007

Kamlesh wife of Zile Singh

.....Petitioner

v.

State of Haryana

.....Respondent

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Present: Mr. R.S. Rai, Senior Advocate with Mr. Gautam Dutt,
Advocate for the petitioner.

Mr. Vikas Chaudhary, Assistant Advocate General, Haryana
for the respondent-State.

Mr. Baldev Singh, Senior Advocate with Mr. Arshvinder
Singh, Advocate for the complainant.

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S.S. Saron, J.

The petitioner Kamlesh seeks regular bail pending trial for the offences under Sections 148, 149, 323, 506, 302 and 285 IPC besides, Section 25 of the Arms Act.

The FIR in the case has been recorded on the statement of Raj Kumar-complainant, who is a property dealer. Complainant-Raj Kumar along with his two brothers is residing with their father in a house which is in the centre of the village. The nephew of the complainant came to see them at 9.00 O'clock at night on 18.9.2006. He was abused by Kartar Singh son of Mansa Ram on the way. He was also given a beating. When he reached home, he told the complainant and the brother of the complainant,

namely, Karamvir about his being given a beating by Kartar Singh. The complainant and Karamvir had gone to Kartar Singh to raise a protest. When they reached near the house of Samey Singh, they found Kartar, Rajesh, Suraj Bhan and Om Parkash armed with rods as also Kamlesh (petitioner) and Bahadur Singh armed with 'Dandas', Sonu, Vijender and Satveer armed with 'Lathis' as also Jia Ram, Bittu and Vijay armed with Pistols. They had conspired with each other and were coming towards the house of the complainant. On seeing the complainant and his brother Karamvir and his nephew, Kartar raised a 'Lalkara'. Kartar then attacked with the rod in his hand on the head of the complainant. Rajesh hit his rod on the head of the complainant and Om Parkash with his rod hit on the left hand wrist of the complainant. The petitioner-Kamlesh, who had a 'Danda' in her hand, attacked on the back and also gave a 'Danda' blow on the left foot of the complainant. Thereafter, others also caused injuries. The role attributed to the petitioner is that she gave a 'Danda' blow on the back and also a blow on the left foot of the complainant.

Learned senior counsel for the petitioner has submitted that in the present case two incidents took place. One near the house of Samey Singh and the other near the gate of Umkal Hospital, Gurgaon. The petitioner is involved in the incident at about 9.00 p.m. near the house of Samey Singh. It is submitted that according to the medical report of the complainant Raj Kumar no injuries were seen on the back or on the left leg of the complainant. Therefore, it is submitted that the injuries attributed to the petitioner are not corroborated by medico-legal examination of Raj Kumar. It is also submitted that Raj Kumar made a statement before the Police under Sections 161 Cr.P.C. in which he has alleged that Kamlesh

(petitioner) hit the father of Raj Kumar, namely, Amar Singh (deceased) with the brick on his chest. It is submitted that even the said injury is not there in the medical evidence of the deceased Amar Singh. In fact, Amar Singh (deceased) was 80 years old and he had received an injury on his head and admitted in Umkal Hospital on 18.9.2006. In his post-mortem report the cause of death has been described as head injury and its complications. It is also submitted that complainant's younger brother's wife, namely, Kavita, who is a prosecution witness, in her statement under Section 161 Cr.P.C. insofar as the role of the petitioner is concerned, has only alleged that she hit complainant Raj Kumar with a 'Danda' on his back and left foot.

In response, learned counsel for the State and Senior Advocate appearing for the complainant have opposed the application for the grant of bail. It is submitted that the petitioner was a part of the unlawful assembly of the assailants who attacked the complainant side. She is attributed to have caused injuries on Raj Kumar and also on the deceased Amar Singh. It is submitted that even if the injuries are not there in the medical reports, the participation of the petitioner along with others is there and she is liable in view of the provisions of Section 149 IPC. It is also submitted that keeping in view the active role of the petitioner in the case which not only resulted in the death of Amar Singh but also involves the petitioner for the offence of attempt to murder in terms of Section 307 read with Section 149 IPC, the petitioner is not entitled for bail.

After considering the contentions of the learned counsel appearing for the parties and perusing the record it may be noticed that the

role attributed to the petitioner is that she gave a 'Danda' blow on the back and left foot of the complainant Raj Kumar. In the subsequent statement recorded under Section 161 Cr.P.C. of Raj Kumar it has been alleged that the petitioner hit Amar Singh, the father of the complainant Raj Kumar with a brick on his chest. However, the injuries on the person of Raj Kumar and Amar Singh (deceased) are not shown to be there on the basis of medical evidence on record. Therefore, the involvement of the petitioner in terms of Section 149 IPC is to be considered and gone into after evidence has been led. At this stage, it would be premature to go into this aspect. More over, it may be noticed that there are 11 accused in the present case and out of them six have been granted bail. Om Parkash, who had a rod in his hand and is attributed to have caused a rod blow on the left wrist of the complainant Raj Kumar, has been granted the concession of bail by this Court in pursuance of order dated 1.3.2007 passed in Criminal Misc. No.9104-M of 2007. The petitioner is a lady. The trial in the case is likely to take time. Her role is somewhat similar to Om Parkash who has been granted bail.

In the circumstances, she is entitled to the concession of bail. Consequently, the petitioner on her furnishing personal bond and surety to the satisfaction of the learned Chief Judicial Magistrate, Gurgaon shall be admitted to bail.

The criminal miscellaneous petition stands disposed of.

August 21, 2007.

(S.S. Saron)
Judge

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